

**Town of Southeast
Zoning Board of Appeals
Minutes of April 20, 2020**

Timothy Froessel, Chairman	Present
Paul Vink, Vice Chairman	Present
Roderick Cassidy	Present
Greg Wunner	Present
John McNeill	Present
Steve Corozine	Present
Andres Gil	Present
Willis Stephens, Jr., Town Attorney	Present
Victoria Desidero, Secretary	Present

Work Session:

Regular Session:

Chairman Froessel: Good evening everyone and welcome to the April 2020 Public Hearing of the Town of Southeast Zoning Board of Appeals. This is a first for us, we are doing this virtually using Zoom Teleconferencing, a videoconference. Obviously, in light of the Coronavirus circumstances, this is new to all of us. We don't want to penalize anyone for technological issues; we're just going to try to work as best we can. We're going to try to have a hearing that's as normal as what we usually do, just in a different format. I appreciate everyone joining in tonight and making whatever technological adjustments you had to make to join us this evening. I realize that this is unusual. I have a feeling it's going to become the usual for at least the next several months, but we have to carry on business here. I will apologize in advance if my dogs start barking in the background. I'll mute myself if necessary. We have six applicants on the agenda this evening. For those that are new to us we are going to proceed in the order in which the applications are on the agenda unless someone is not here for some reason, in which case we might skip them.

1. DC3 Holdings, LLC, aka Fast Lane Quick Lube and Car Wash,

Tax Map ID 46.-1-6 - Continued Public Hearing to review an application for a Use Variance to add Motor Vehicle Service Station Use to a property in a Zone that does not permit this use. The property has an existing Special Permit for Quick Lube and Car Wash in the SR-22 Zone.

Richard O'Rourke, Attorney for Keane & Beane, represented the application.

Mr. O'Rourke: Good evening Mr. Chairman, members of the Board, my name is Richard O'Rourke and I'm an attorney with the law firm of Keane & Beane, PC serving as counsel to the applicant. I will affirm under the penalty of perjury as an attorney that what I'm saying is based upon the records and information that I have had at my disposal and what I have learned. With that, I don't know if at this point you wish to also swear in the property owner, Mr. Curran, who is on Board. He is participating. Do you want to do that now or how do you want to handle it?

Chairman Froessel: I think we should just do that now.

Mr. O'Rourke: OK, fine.

Chairman Froessel: Rod, would you do the honors?

Boardmember Cassidy: Yes, I don't see Mr. Curran but I assume he's on. Mr. Curran would you raise your right hand?

Mr. Curran: My right hand is raised.

Boardmember Cassidy: Good, do you swear that the testimony you are about to give is the truth to the best of your knowledge?

Mr. Curran: I do.

Chairman Froessel: Thank you sir. Rick, I'll just give a little background for anybody who may not have been here the last time. This application was on in either December or January. We heard the application at that time. I had some questions about the application, mainly having to do with how the applicant's business became a registered inspection station in the state of New York, but that would require it to be a repair station and part of the application for being a repair station is to have the Zoning for that business. So, we sent you back essentially to do some homework and get some background information for us on what exactly had transpired.

Mr. O'Rourke: That's correct and thank you because I did not handle the closing when Mr. Curran bought this building and through the FOIL response and what I've done, I don't want to bury you in paper, but you have received the Share Link file that I know has been distributed to all of the Board members. You will note that one of the folders is the entire FOIL response. The New York State Department of Motor Vehicles keeps records for 10 years so we were able to go back and get all of the records for the 10 years and that's in folder five. But, I think, if I may, the best way for me to explain this is... Because we've learned a lot through this discovery effort on our part and I think it will answer many of the questions that Board members may have in terms of what happened and how this came to be what it is today. So, with that, with your permission I will just go to folder one if we could; it starts with Town permits and Zoning. I will take you through it and I am sure that you will have some questions and we will be pleased to answer all of them, OK? So, if we go to folder one, I see that Ashley has...

Ms. Ley: I believe that you should be able to see Building Department at the top of the page.

Chairman Froessel: Yes.

Ms. Ley: This is the contents of folder one.

Mr. O'Rourke: Right, OK. So, you will see on the first page what we have, and this is the Town permits, the Zoning, and the information that we have on file. You will note that this is from the Building Department, Town of Southeast. The issuance date is November 12, 2019, it's to the applicant DC3 Holdings LLC and you will note that under the work description, and this is the information put in by the Building Department, it says Operational Permit Service and Filling Station. That's an important consideration because we're going to go to the Zoning and I'll explain this in a moment. In other words, as far as the Building Department is concerned in its records, this operational permit is for a service and filling station. If you go to page two you will note that under the Town Code, in terms of the permitting, the very first one says service and filling station; per tank \$25 and that of course is the category in which the Building Department issued the operational permit. After you go through that and the fee schedule, the next thing that I have and we all recognize that as it stands right now this property along Route 22 is in the Zone SR-22, which does not permit a motor vehicle service station. That is the Zoning amendment that occurred, of course after an approval was granted back in 2000 to this Quick Lube Car Wash facility. At the time of the approval that was granted back in 2000, the definition under which this application was a conforming use, which of course it is now a non-conforming use, was under the definition of motor vehicle service station. So, at the time of the approval it was considered to be a permitted use by Special Permit and you will note that the definition says 'area of land including structures they're on or any building or part thereof

used for lubricating or otherwise servicing motor vehicles' and it talks about including towing service, body work, painting. We're not doing any of that, nor has there been any proposal for that. And by the way just to recap, what we're proposing here is no physical alteration whatsoever to the site nor any change in terms of outdoor displays or any signage or anything like that. But I think it's important for us to note that when this was approved this was the category under which this was considered to be a use permitted by Special Permit. So, you then turn to the letter of why we're here tonight and that's the letter dated December 12 that was sent to Mr. Curran from Michael Levine as the Building Inspector. What he says is that he 'reviewed the request for a modification to the Special Use Permit on your property' and it says, 'since the issuance of the Special Permit the Zoning designation of your property has changed to SR-22.' We have no debate about that. 'The use as a motor vehicle service station is not available as a special use in the SR-22 Zone.' He's acknowledging that it was a use as a motor vehicle service station when the approval was granted, but of course not an existing, lawful use today other than to be a pre-existing, non-conforming legal use. We turn next to the Special Permit request that was issued back in 2000 with respect to this application and for this site and you will note that at that time it properly notes that it's within the H-2 Zone and has a principal use upon the grant of a Special Permit that would be permitted. It was granted as to allow a quick lube and car wash on the subject premises. Just as you have the definition of Personal Services in the Zoning where this permitted use is, you know within the category of Personal Services there are a variety of things as a generic term. Well, as we stand here with this application, it was approved under the Motor Vehicle Service Station use as a quick lube car wash application. The limitations that are set forth in the Special Permit you will note indicate no hand washing, there is a concern as to quite frankly what the use would be. Those of you that are familiar with what this use was previously. It was an old motor vehicle service station with essentially a hand carwash and it was pretty dilapidated. It had the pumps up front. That was replaced by this facility and so that's the resolution of approval. So, as it stands now those are the documents as to Town permits, the Zoning, and the determination of Mr. Levine. We turn now, and this is where Tim had some very good questions, we turn to the next folder which has to do with the DMV (Department of Motor Vehicle) regulations and that has to do specifically with regard to the repair shop application. You will see that the first document says, 'attention to all repair shop applicants' and you will note that there has been underscoring in yellow so as to point out what this does and what is required for a repair shop applicant. You will see that, and Tim properly saw last time when he looked at this and said 'wait a minute, hold it, you're supposed to have some kind of certificate of occupancy or a copy of a letter from the municipality' but you will note that, and this is where the FOIL information became very important and very helpful to us. You will note that it says 'in lieu of any of the above, the facility number and the name of the previously registered repair shop that was at that location will suffice.' The previously registered facility must be verified through DMV records and must have not expired more than 10 years prior to the filing of the application. So, when Mr. Curran bought this property in 2016, and this is what the FOIL information indicated and this is what he thought he bought. He bought a facility that was a licensed repair shop as well as a licensed inspection station and so if you take a term and you look at the regulations pertaining to a repair shop and specifically I believe I copied page 82 and I see Ashley has it up again. It talks about, that's the covering page and then the next page, you'll see that it says 'if the business name of a registered repair shop is changed or the owners of the registered repair shop incorporates the business, changes the name, creates no change in the actual ownership or operation of the repair shop, notification shall be given to the commissioner not more than 30 days there from. The commissioner shall treat such change of name and incorporation as an

amended and charge a filing fee of \$5.00.' OK, so what we have is the regulations with respect to the repair shop and you will note that if there was a previously registered repair shop at the time of the application and had not expired for 10 years, then that repair shop registration and approval may be renewed and it does not require anything else from the Town. So, I don't want the Board to think that there was some skulduggery or something was submitted; this is the application process that was followed by Mr. Curran and this is what he bought in 2016. The site along with the registration with the Department of Motor Vehicles as a repair shop, duly registered. The next folder, and I'll show you the documentation for that in a moment, but I think it's important.

Chairman Froessel: Can I interject for one minute?

Mr. O'Rourke: Sure.

Chairman Froessel: Correct me if I'm wrong, I just want to make sure I am understanding the facts correctly. At the time that your client purchased the property and the business it was already a registered motor vehicle repair shop in New York State, correct?

Mr. O'Rourke: That is correct and had been such for a long period of time; back as far as the records we can obtain. You will see that in a moment because you will see the progression in terms of the registration numbers. This has been a duly registered New York State repair shop for more than 10 years and also has been a duly registered New York State inspection station for more than 10 years. This is not something new. It's been a motor vehicle service station when it was approved. The Special Permit was issued because at that time it was a permitted use; way before he bought this property this was already registered and had been registered by several owners. In continuum as a New York State repair shop and as also, secondarily, a New York State inspection station and we have all this information in support and I will show it to you.

Chairman Froessel: One of those prior owners somehow made a representation to the DMV that they had the necessary Zoning to operate a motor vehicle repair shop there. I'm not saying it was your client, it appears it was not your client if the repair shop designation already existed when he bought the property, but somebody did and I've always been curious about how that happened.

Boardmember McNeill: Can I answer something here?

Chairman Froessel: Go ahead John.

Boardmember McNeill: I remember when it first opened up and to my knowledge, they always did repairs in this station. They did tires, they did shocks. They actually had Monroe Tire and Shock display in the foyer area where you could get a cup of coffee, you could sit down, you could talk to the business owner. You could do your scheduling there. So, back when I remember when it was the first Mount Maya, they were always doing this. That's my recollection from years and years and years ago. They did this in previous interpretations of this building.

Chairman Froessel: Yes, but the Special Permit they had was specifically for a quick lube and car wash.

Boardmember McNeill: But they displayed tires, shocks; they were doing that type of work there in a different incarnation a couple years ago.

Mr. O'Rourke: If I may, just for clarity purposes, I think the point of it all is this: when Mr. Curran bought this property, yes, he bought a property, he visited the property, it had the registration numbers up as a New York repair shop. It had the registration up as a New York State inspection station duly licensed through the Department of Motor Vehicle. I think, respectfully Tim, where the issue is that this when it was approved under the category of a motor vehicle service station and the Special Permit was granted there were certain restrictions

that were placed on it. As I recall, you couldn't have hand washing outside, things of that nature, which reflected the moribund archaic deteriorating service station that had been there previously. So, as we all know in terms of construction on something like this, yes you have property rights, they can be proscribed, but they have to be proscribed specifically. Here he couldn't do hand washing. Here he couldn't put up gas pumps, that was part of the definitions. So, respectfully, what I want to do is just go through and I will explain why I think what Mr. McNeill is saying is correct because that's his own personal observation so that's certainly part of the record, but also this goes way back. So, let me, if I may, I'll just continue through this and just turn to the proof if that's OK.

Chairman Froessel: Go ahead.

Mr. O'Rourke: All right, so you saw the regulations as far as the repair shop, you saw that clearly there had been a duly registered repair station license previously at the time of purchase and it's continuing, it gets continued. With regard to the next use is the New York State inspection station and you will note that on the very first page... No you're on the wrong documents Ashley.

Ms. Ley: Is this one the right one?

Mr. O'Rourke: You got it, OK. So, you will see on the first page, and it's highlighted, number 6 on that list there you will see inspection station requirements. 'You must have a repair shop registration at the same location for a public inspection station.' So, we now know what the regulations are for a repair shop, we now know that you have to have that so you can have a proper inspection station. If you will turn to the next page you will see it's the regulations for a motor vehicle inspection station and, that's the coversheet, and you will then turn to the next page, which I think is page 12; is that what's up there?

Ms. Ley: Yes.

Mr. O'Rourke: OK, when you turn to page 12 that it says the following and it's highlighted on the bottom there. It says 'notwithstanding the provisions of this subdivision, a commissioner shall accept an application for review if the application is for renewal of a public official emissions inspection station license or an original application for a public official emissions inspection station license is received from a person who purchased the facility from another person and such facility had a public official emissions inspection station license in good standing at the time of the sale. For the purpose of this paragraph 'in good standing' means that, at the time of the sale the facility's license is not suspended or revoked and the facility does not owe any outstanding civil penalties, the facility has no hearings or appeals pending before the department and the facility has no litigation pending in which the department is named the party.' So, that's the standards for a New York State inspection station. That's the regulatory background. If you now will turn to the next folder, which I think is relevant DMV documents, Ashley.

Ms. Ley: There's the repair shop and inspection station history of the site or there is New York State DMV regulations repair shop, which I think we already went through.

Mr. O'Rourke: All right, hold on a minute, let me get my.... What's the next folder after inspection station?

Ms. Ley: I believe it's the repair shop and inspection station history of the site. Then there is the FOIL response and then the last one is financial information.

Mr. O'Rourke: I apologize, yes, we're on folder 4, which is the relevant history. Can you put that one up? OK, here is information taken from the FOIL response which you will have in full shortly, but you will see that these are documents that were based on the FOIL request for records kept by the DMV for this address. The DMV keeps records for 10 years. You will see there is a pre-2013 license repair shop and inspection station with the number 7109099. The

current owner bought the property with the licensed repair shop and inspection station number 7116551 and its current licensed repair shop and inspection station number is 7126082. So, as you can see, in terms of the regulations for the renewal of and having a New York State repair shop license, having a New York State Inspection Station license provided that this was an existing licensed facility with a new owner comes in and he is not a felon and he's not subject to any court proceedings or anything else you can get the renewal. So, when you turn the next page you will note that it says, 'date of agreement or sale June 28, 2013.' At that time there was an official emissions inspection station and the number was 7109099. So, that based upon as far back as we can get the records from DMV, that means that prior to 2013, and I don't know for how long these people owned the property, but nevertheless this was a licensed inspection station, which of course means it also was a licensed repair shop. This was part of a sale that occurred in 2013. You will note that there is on the next page it talks about this is for the repair shop registration. It notes the previous number and business name if known, you will note that this applicant in 2013, and this confirms the record of the first page, this applicant had listed as the facility then existing 7109099 and you will note that below that you will see 'check the type of inspection license you are requesting' and there's an X mark by number 1, public inspection station, and category number 2 at the bottom of the page you will see 'check the inspection groups for vehicles you intend to inspect' and you will note that A and B are checked, which is for inspections for passenger vehicles and not getting into motor vehicles over 18,000 lb. of weight. Also attached are photographs of the prior inspection official inspection signs that were posted. The last page, because I know there is a question as to what's happening with the FOIL, you will note that we did make the request back in December and you will note that in the second paragraph it says 'due to the reasons listed below we will need a total of at least 40 business days to complete your request.' We didn't get this stuff in time for the February meeting and that's why we requested the adjournment to the March meeting and that was when of course Victoria called me and we were going through the beginning of COVID-19 and I think we were the only one on the agenda for that evening. Everyone else had said they were going to adjourn so we adjourned as well. So, I just wanted you to know that that's the basis of it. But the documentation I have, respectfully, is irrefutable. This has been a licensed repair shop and inspection station for as far as back as the records DMV has that they could produce for us. The next folder, number 5, you will note is the entire FOIL response and you will see that the certifications go with just about every single page. The documents I pulled out and put in number 4 indicating the period of time in which this has been a New York State licensed repair shop and this has been a New York State licensed inspection station as pulled from the FOIL documents, but for the record and for the request having been made, this is the entire FOIL request. The next folder, and obviously we're prepared to answer any questions regarding any of this. The next folder contains the financial information, but I also think it's important that you know what the car care services are for this operation. It is as you know a quick lube and it's a car wash. Well, as part of the quick lube and its services you will note that what it does in terms of oil changes, the additional services that are of course consistent with the facility's use and you will also note that there are also preventive maintenance and sales. So, the purpose of showing this, and this is what I think happened here, and based upon the information I have gotten from the DMV and having spoken to others that have gone to this facility years ago and know that there were tires that were there. So, I think what happened here, respectfully, a competitor has complained, a competitor who would like to see less competition, has raised an issue and I think perhaps mistakenly not realizing that there has been an inspection station, there has been a repair facility duly licensed for more than 10 years on this site and that it is consistent with the original

approval. When I guess it was, and Mr. Curran can attest to this, I guess someone complained to Jerry Schramek or to Mr. Levine saying, 'hey he's not supposed to be selling tires.' Mr. Curran who brought it in 2016 as an inspection station and repair facility properly licensed by the State of New York, he thought he was doing something wrong so he went to the Building Inspector and said you have to modify my approval. That was when a letter was written saying that you can't do this and frankly, I am uncertain how, based upon the information we have, how this could not be considered proper as part of the service. I'm not aware of any inspection station, maybe you are, or repair facility where you flunk a car because you have a bald tire and then you tell them to go back on the road because I can't sell you the tire. But anyway, that's neither here nor there. The point of all of this is that standing alone, based upon the records that we've been able to discern this is properly licensed, it has been properly licensed, and I'm unaware of anything other than this most recent issue, which I believe was prompted not necessarily by the Code Enforcement Officer himself but by complaints of a competitor. That having been said, put that all aside, even if you were not to accept the evidence as presented and the history of this and the fact that tires had been sold here for a long period of time here before this application. Even if you set that all aside, what you now have are the financial information, which I redacted social security numbers. In the effort of full disclosure to demonstrate that the property, if you were take the position that the Building Inspector was correct and he can't augment his services, this property as now permitted cannot yield a reasonable economic return. So, I think that you will see, I think there's a summary of the losses that there have been. You have the tax information and the tax records indicate, and I don't know if it's in this packet but I can affirm because I have a photocopy of it here, Mr. Curran owes \$80,000 in back taxes on this site. This property, and I daresay unfortunately, because of the status of where we are with COVID-19, unless relief is granted here this business will fail because it just cannot yield a reasonable economic return. I don't know what it's going to do with this property and some of the others that I understand why the Zoning was changed, but by the same token this is not an application for anything new. It's really a confirmation of something that's been there for many, many years. So, that's my presentation. Mr. Curran may have a few things that he wants to add. I'm sorry for the length of time, but I think there was some misunderstanding and I wanted to make sure everyone understood the process and the licensing that has gone on at this site for many, many years. Mr. Curran, is there anything else that you want to add?

Mr. Curran: I'd like to, if Ashley could go back to the services that we currently have? I'd like to make just a couple quick comments. There are really two comments: I am actually a registered New York State Inspector. I myself inspect cars and pass or fail them based on safety and based on the rules and regulations of the DMV. In the last four years I never had an issue. There have never been any violations. Now, two of the main things are brakes on cars and it's a safety issue. We already do brake fluids; we already clean brakes. Someone has said to us that we can't do brake pads. I'm not looking to rebuild the front of the cars; I'm not looking to do transmissions. I am looking to help my customers, we're open 7 days a week, pass a New York State inspection and put on new pads and new rotors if they need them. That is something that instead of failing them, sending them on their way and having an upset customer; that's one thing. Number 2: If you go up a little bit further, we are already doing a lot of tire services. We do tire rotations, we balance tires for customers, we patch tires and we plug them. I store summer tires and winter tires for some of my customers. So, I don't understand if we're allowed to do all this other work for tires including tires sensors, the TPMS, which is a very important service. We're the ones that lost along the way if someone said you can't sell new tires. Now, the last part of this whole thing is that if you look at the industry, the

world we live in and the industry of automotive is changing very, very quickly. It's all about total car care. It's all about total car services. I'm competing with the dealers. I'm competing with Mavis. I'm a local business owner. I'm trying to do the best thing I can for the customers. I want to offer as many services as I can for them. I want this to be a one-stop shop place. If you look at Firestone, Mavis, Meinecke; any of these other facilities, they're all doing the same things. They're doing tire rotations, they're doing brakes, they're doing inspections, they're doing fluid exchanges. It should be a free market enterprise. It should be an open business. On top of all that, this is Route 22, there are 22,000 that drive by this facility every single day. They need repairs, they need services. Our doors are open 7 days a week for them, 10 hours a day. I should be able to help them, service them. The other thing is, as a child I used to go to the Red Rooster Inn and I would go there with my dad and we would spend time in Brewster. In the past four years I have given to the Guide Dog Association, I've had Little League teams that I've sponsored. I've given to the Carmel Police Department, fire department. I wash cars for the Putnam County Sheriff for \$4.50; that's a breakeven. We've washed cars for the New York State Troopers. I've given to all their foundations, all their golf tournaments. I'm about giving back too and somehow, we got tangled up in this thing. You're not allowed to do this service; you're not allowed to do that service. This business is being challenged right now because of the world of COVID-19. It's really important for me to service our customers in the best way we can so we can grow, so we can be profitable, so I can give back to this community as well. And, I just want to say thank you for your time tonight. Do you have any questions regarding the information that Rick and I... Rick and I spent a lot of time talking to the DMV, going through all this history; it's obviously very clear that this facility was a registered New York repair facility from day one, back in 2000 when this thing was first built. You can't have an oil exchange or lube without a New York State repair facility. We were also approved by the Town as a filling and gas station. I don't want to have pumps there, but if you look at the history going forward, it's been a New York State repair facility for over 15 years and we haven't had any issues at all. I just want to thank you. I appreciate all your consideration and we'd like to answer any questions that you might have right now.

Chairman Froessel: I'll start with a couple and then I'll go around the Board. First, Rick I just have a question about essentially what your position is. Is it your position that under the Special Permit that was granted by the Town Board back in 2000 that a repair station use was legal for this property?

Mr. O'Rourke: I am looking at the definition of the use that was in the Zoning Ordinance at the time this application was approved. Let me just get to it if I may Tim. You will note that there is no definition for quick lube car wash service. There's none that was in the Zoning Ordinance at that time. However, there was a definition for a motor vehicle service station and so what happened here was obviously this was considered a permitted use under the definition of motor vehicle service station. Now, having said that, when you take a look at the resolution of approval for the Special Permit for quick lube carwash, not just a carwash, but quick lube carwash. What it did was it limited in the Special Permit certain things and it limited things such as you can't do hand car washing. I believe that there's some signage, I'm trying to find it... In other words my point is this, Tim, when it was approved it was approved under the definition that sat in the Zoning Ordinance for motor vehicle service station and it had to be. And then what happens is, OK, so it's approved so then you restrict it in terms of what can go on that site and what they were concerned about was the history of that site because it was a pretty deteriorating service station that was there and so quite clearly they didn't want to have anything that was an eyesore. They didn't want to have people outside washing the cars on 22 and there was also a lot of litigation related to the signage that was to be out there and so

there were limitations that were placed on it. I don't see any limitations in that granting of a Special Permit, nor do I see any definition that says anything about limiting the quick lube component and not becoming an inspection station, not becoming a repair shop. Now, this goes back 15 years before Mr. Curran ever bought it, but my position is that it was approved under the definition of a motor vehicle service station and what he's asking for are things that relate specifically to his inspection, which is there lawfully as far as I can tell and as a repair shop where he has to flunk somebody. You have a tire that's no good, I have to flunk you, and it's not that he's going to be putting a sign outside "Firestone" or something, we said no physical alteration, but he has to be able to sell a tire. If the brake pads are shot; he says, 'I have to flunk you because of your brake pads.' That's something different from your transmission is shot and I'm going to do transmission work or I'm going to replace your oil pads. I'm going to do other kinds of motor vehicle service.

Town Attorney Willis Stephens: May I interject for a second? This is Will Stephens. If you read the Special Permit that was granted back in 2000, paragraph 2 under the second resolve clause where it's a permitted use. I think it is relatively specific as to the limitations and that if anything were to exceed what is expressed there that they would have to come back to amend the Special Permit.

Mr. O'Rourke: Paragraph 2.

Mr. Stephens: It's on page 2 of the Special Permit and goes to page 3.

Ms. Ley: It should be up on the screen now.

Mr. O'Rourke: OK, I got it.

Mr. Stephens: It specifically says what the facility would be used for: quick lube facility and full-service conveyor carwash as defined. "The incidental retail sale of car care products from the interior premises shall be permitted. There should be no other uses allowed in conjunction with the carwash facility without first having obtained an amendment to this Special Permit."

Mr. O'Rourke: Most of that language that I'm seeing there reflects, and you may recall the big concern was with the carwash itself, they wanted to make sure it was pulled through, washed by a conveyor and extra services were offered.

Mr. Stephens: It says 2: Permitted Use, the beginning of the paragraph. "This Special Permit is issued on the specific commission that you are operating a quick lube facility and a full-service conveyor carwash."

Chairman Froessel: And for no other purpose.

Mr. Stephens: Right.

Mr. O'Rourke: Right, but could you tell me what...

Mr. Stephens: If you're arguing that this is a pre-existing, ongoing use; any pre-existing ongoing use was terminated when this Special Permit was granted and they went to a site plan review.

Mr. O'Rourke: Well, I don't disagree with you on that, but here's my point: my problem and my concern is this, while it defines quite clearly what is the carwash type of service by a conveyor belt, it does not define what is a quick lube facility; it really doesn't. It doesn't. What it defines... the concern as I understand it back then was that it was a deteriorating site where they had... it was awful. The big concern as I recall was that they did not want to have an eyesore of a site. They wanted something that was more appealing aesthetically and that it did not become a junk piece of property on Route 22 and they spent a great deal of time concerned about the carwash thing and I don't see any definition of what a quick lube facility is.

Mr. Stephens: Well, the term is in quotes there because it was a term (inaudible) as I understood it and I believe that if you go back and look at the Planning Board's initial application for Mount Maya it has a statement of use that specifically says it's going to be used

for oil changes. Now a question that I would have and this is something that the Board could ponder is in order to have a quick lube facility do you have to be a licensed repair shop?

Chairman Froessel: DMV regulations say no.

Mr. Stephens: That is contrary by what was said by Mr. Curran moments ago.

Mr. O'Rourke: Hold on a minute.

Chairman Froessel: Section 82.3 of the Motor Vehicle Repair Shop Regulations of the DMV: "the following persons are excluded from the term motor vehicle repair shop: Subsection B3: any person whose activities consist solely of fueling, changing oil, water, batteries, or tires. Replacing fan belts, air filters, or oil filters; installing windshield wiper blades or light bulbs...are excluded from motor vehicle repair shop."

Mr. Stephens: My question is further then: is at the time this was first licensed or permitted, first went into business as a quick lube facility, were the regulations the same then?

Chairman Froessel: That I don't know.

Mr. O'Rourke: I don't know because I don't have the records from the Department of Motor Vehicles because they don't keep the records past 10 years. I don't know. All I know is what I have in these records. All I know is that at the time Mr. Curran purchased this property, this site, he was informed that it was a duly licensed New York State repair shop, it was a duly licensed New York State inspection station. Those were what he had visually posted on the side of the building and as we now confirmed, it goes well beyond 2016. It goes way back beyond that and for the life of me I can't tell you when this filing occurred. All I can tell you is the present circumstances he is under. My point in all of this from the interpretive point of view is that, quite frankly, I don't see a definition of a quick lube facility. I understand the whole business about if you want to disregard if he somehow has illegally a license as a repair shop or an inspection station, he did not do anything illegally. He had...

Mr. Stephens: That's not the implication. I'm not trying to imply that in any way, shape, or form. I'm just trying to find out whether or not when this went into business did the DMV or whomever was the regulating authority at the time require this to be a licensed facility in order to do oil changes?

Mr. O'Rourke: Unfortunately I cannot find... maybe you guys have it in the records of the Planning Board, whether there was... I'm not doubting what you're saying that it was just for oil changes but I'm finding it a little difficult to understand because I know when you go into other places; for example the carwash quick lube place on Milltown Road, the Mobil. You walk into that facility and they're selling Christmas cards, they're selling food, they're selling beverages in there. He's not doing anything like that. What he is doing is all things that are related to what I consider to be the principal uses of, one of those principal uses being a quick lube facility. If you take a look at what his services are, all of which quite frankly if someone comes in and he has pits in there. Mr. Curran, aren't there pits in there?

Mr. Curran: Yes, there are.

Mr. O'Rourke: All right, so...

Mr. Stephens: I've never been to a quick lube facility that didn't have a pit. That's part of what they do.

Mr. O'Rourke: I understand and here's my point, and not trying to be argumentative, even if you want to disregard everything about this being a repair facility or an inspection station. All I have is what I have here by way of the FOIL response and I put it back together again and it's been this way for a very long period of time. I don't know and I don't have nor I have been able to get from DMV, the original application. Put that all aside, even if you disregard all of that, when you consider now that you're saying he cannot allow this tire sale if someone has a bald tire or he flunks someone for brake pads you're saying he can't do it, then what we're

arguing here is that... Take a look at the financials, then the property as now Zoned as you interpret it, this property cannot yield a reasonable economic return and we've done it with dollars and cents proof. So, my point is this: I'm not trying to be argumentative, I'm trying to help my client. What I'm putting together here is a record that indicates that he bought this thing and with it came a repair shop and inspection station. He renewed it properly. All his licenses are in place and quite frankly, for whatever reason he is told he can't sell tires. He says I have to modify my Special Permit. He comes into the Town Hall. We then find out all this background information. The bottom line is this: the business right now, he owes \$80,000 in property taxes. It's not a business that's returning a reasonable economic return. Hence, we believe we also satisfy the criteria for the grant of a Use Variance. That's it. There's nothing else I can say about it.

Chairman Froessel: I was picking up an implication that what you were arguing was that the motor vehicle repair use was allowed all along, which had me wondering procedurally why are we seeking a Use Variance or shouldn't this be an interpretation of the Building Inspector's decision or something?

Mr. O'Rourke: Tim, what's happened is based upon what I got from the DMV. Mr. Curran didn't have all this information. He bought the thing in 2016. What I then found out because of your concern, rightfully so, you said 'wait a minute. How did this become a repair facility? How did this become an inspection station? How did you get that license Mr. Curran? Did you show a certificate of occupancy? Did you have a letter of conformity from the Building Inspector?' Of course not, he didn't. In 2016 he didn't need to because it was already licensed as a repair facility. It was already licensed as an inspection station. So, my point, I'm looking at this and then I looked at the definition of motor vehicle repair shop and I understand what Will is saying. I also understand there is nothing in that approval that defines what a quick lube facility is and all I'm suggesting to you is that it's not unusual for a facility this like, even the one over on Mill Plain Road in Danbury, it's the same kind of thing. They do something more than just oil changes. So, that's the argument. The financials are there. This property is not doing well and we believe that even if you disregard everything that's happened and what's been said and the records from the Department of Motor Vehicles...even Mr. McNeill said he saw them selling tires years ago. So, I don't know how it started, I don't know what happened, all I know is what I have now based upon the documents in front me. What's my argument? My argument is an interpretive one and if in fact we're wrong and the alternative would be we're entitled to the Use Variance. One way of looking at this after I dig through all of this is to suggest that maybe what happened here Mr. Levine was wrong and that's why we appealed.

Mr. Stephens: I think one of the questions, Rick, is if you look at that Special Permit and its limitations, I would have a tough time as an attorney saying that they even could have gone into the car inspection business without having amended the Special Permit, which was never done.

Mr. O'Rourke: I understand that, but when that happened then it should have been taken care of 15-18, maybe 20 years ago because obviously the records indicate this was like this for many, many years and when Mr. Curran came along...

Mr. Stephens: You know as well as I that you can't argue estoppel in this Town.

Mr. O'Rourke: I'm not arguing estoppel. What I'm arguing is: this is the information I have and I'm not saying anything other than the fact that there is no definition of what is meant by a quick lube facility and it's not unusual in a quick lube facility for there to be other services that are performed. That's my argument and without the definition... Clearly my point is that these are... It's not like he is setting up a toll operation or something under motor vehicle service station definition; I'm not suggesting that or repairing transmissions. It's related solely to the

issues of the inspection station, but I understand the point: how did I become an inspection station. I don't know. They filed the applications.

Chairman Froessel: Will, there's another question I have and you may not know the answer to it now, but under the terms of that Special Permit it said to do any other use would require the amendment of the Special Permit and does that require action of the Town Board rather than our Board? I'm wondering whether we are overstepping our bounds by doing that. Something that may require some thought. In any event, I'll move on to another couple of questions that I have. The letter from the Building Inspector to Mr. Curran is dated October 23, 2019: Rick or Mr. Curran, what happened to cause you to go to the Building Department and make an application?

Mr. Curran: I'm sorry the beginning of the comments got broken up. Someone's internet connection might have been unstable or something.

Chairman Froessel: I'll repeat it. The letter that you received from the Building Inspector is dated October 23, 2019 and, in that letter, he says that he received your request for a modification of the Special Use Permit. What happened that caused you to go in and seek a modification of the Special Permit?

Mr. Curran: I was under the impression that I could fix tires, repair tires, patch tires, rotate tires, and so forth, and sell new tires to customers that requested them. Jerry Schramek from the Town came in one day and was very polite and incredibly considerate and said, 'are you aware that under your current permit that you're not allowed to sell brand-new tires?' I looked at him and said 'OK, I was not aware of that and what do I need to do to facilitate the approval so I can do this properly and work in this part of the business?' So, I went and met with Mike Levine. He said, 'look this is what you have to do: you have to write a letter requesting that you can do tires.' So, I wrote him a letter requesting this and he subsequently came back to me and said, 'you can't do this,' which I was very surprised about because as I think tires have been sold at this facility for many, many years. We do repairs, we rotate, we balance, we put in tire sensors. It's a very important part of the business for us now as cars become more and more sophisticated. So, this is really just completing part of the so-called tire servicing business, but hopefully I answered the question.

Chairman Froessel: OK, and was that in 2019 when Mr. Schramek came?

Mr. Curran: It was. I can't remember the exact date but I think it was kind of in the spring or summer of that year. They came in and said, 'oh by the way are you aware of this?' I said 'no, I actually wasn't aware of it' and it's not like I'm interested in becoming a tire distributor. What I'm interested in is if a customer has to fail from his inspection because he has bald tires, I don't want to fail him, make it an inconvenience for him, put him back out on the road with bald tires. What I'd like to do is say 'Mrs. Smith, we have to fail you under the DMV state guidelines. Why don't you let us order one tire, two tires whatever' we'll order you new tires, come back tomorrow and we'll put the tires on and then we will go ahead and approve you and pass you for your inspection.' That is the nature of what I'm trying to achieve here. I'm trying to better service the customers, pass them with inspections, and actually trying to round out my tire services. I'm already doing sensors, I'm already doing rotations, I'm already doing balancing. Anyway, hopefully I answered your question.

Chairman Froessel: You did, thank you. Given the state of your knowledge, you bought the building and the business thinking that you were a perfectly legal repair shop and inspection station in New York. In 2017 and 2018 were you doing brake jobs and selling tires during those years?

Mr. Curran: In the very beginning when customers would request it, we would help them and do it. We were doing some of those particular repairs. There's one thing that I did actually

want to add here, which was in the so-called permittable part of quick lubes it says that you don't need a repair license to change oil, to change wipers, and change batteries and that is actually true in the state of New York, but if you want to do any of those other services. If you want to change a serpentine belt, you want to recharge an air conditioning part of a car, if you want to do a tire rotation, or if you want to do other types of repairs, minor automotive repairs – shocks or struts or minor things in front, you do need an actual repair license and that's the reason why this facility, that has done repairs for the last 10 to 15 years or even further, has had that repair license because they have done very minor repairs. We're not doing major but we are doing minor repairs there and hence, we did a repair license and that has enabled us to do more for our customers than just change oil.

Chairman Froessel: OK, thank you. I think now I'm going to go around and ask each Board member if they have any questions or comments about the application or questions for the applicant.

Mr. Stephens: Before you poll the Board, I think one of the concerns and the reason why this application was denied if you will by the Building Inspector, is that when the project was originally built as Mount Maya, the automobile repair was a Special Permit use. Now the property has been rezoned, and correct me if I'm wrong on this Ashley, they are in the SR-22 Zone?

Ms. Ley: That's correct. I think Will's connection got frozen.

Chairman Froessel: I think Will's frozen, yes. Let's give it a few seconds and see if he comes back. Maybe not.

Mr. Stephens: ...(inaudible) argument is really more seeking a Use Variance than it is trying to... can you still hear me?

Chairman Froessel: We can now, you were out for about a minute there.

Mr. Stephens: My point is that I think the application is properly laid before this Board as a Use Variance application and not an interpretation. They're looking to expand a Special Permit use that is no longer a permitted use even as a Special Permit. So, I think it would have to come into your deliberations as a Board.

Chairman Froessel: So what you're saying is it's properly before our Board and not necessarily the Town Board?

Mr. Stephens: Right, because I don't think the Town Board would make that decision.

Mr. O'Rourke: If I may Tim...

Chairman Froessel: Yes, go ahead.

Mr. O'Rourke: I understand what Will is saying and as far as the interpretation issue, which I've raised now in light of all of the information I got from the Department of Motor Vehicles, an interpretation is clearly and is before the Zoning Board of Appeals as is our application for a Use Variance. Again, our position is essentially one of interpretation and the alternative if we fail to convince you that it's an interpretive issue, that we are nevertheless entitled to the Use Variance for the very limited purpose of allowing for these two services that are directly related to his present services. That's it.

Chairman Froessel: OK, I'll go to each of the Board members. Just so we're not talking over each other in this unique format, I'll just call on each of you one at a time and one thing I would ask that you do: if you have any comments or questions or whatnot I would also ask you to give me an indication if you are comfortable voting on this application tonight. I will just throw it out there that I may not be comfortable. We have a lot of material today. I didn't have a chance to review all of it and in light of all the conversation we've had I'm kind of on the fence. In any event, Vice Chairman Vink had joined us just a few minutes after 8:00 and is with this so Paul I'll start with you, if you have any questions or comments.

Boardmember Vink: I do not have any questions. My apologies for joining late, I had some technological issues on my end but I got here. I am comfortable voting tonight if that's the decision of the Board. I don't have any questions, I have plenty of comments that can wait until the closing of the Public Hearing before we take a vote, but I have no questions.

Chairman Froessel: OK, thank you Paul. Rod, any questions or comments from you?

Boardmember Cassidy: My only question is: would it serve any proper purpose to go back and look at the original application or are we beyond that at this juncture?

Chairman Froessel: My view is to the extent that there is now a request for an interpretation, that might very well be necessary.

Boardmember Cassidy: Because if we were going to actually interpret what it is we're looking at to see what quick lube actually means, and I think it would serve us all, assuming they are still in existence, look at the original application to see what they thought it meant when they approved it.

Boardmember Vink: The Zoning Board paperwork too as well as the Town Board; not the Zoning Board the Planning Board paperwork.

Chairman Froessel: Rick, I saw your hand was up, did you have a comment?

Mr. O'Rourke: I don't have those records and perhaps, Victoria, maybe they are somewhere to be found. I know, unfortunately, and Lord knows when it occurred, I know there was a flood that occurred at one point and records were lost. I don't know if that was at Jacobsen's office or it was downstairs in the Planning Board office, but...

Ms. Desidero: I believe that Mr. Curran went through the Planning Board file, he can correct me if I'm wrong, but I thought at the very beginning of this when he was talking to the Building Inspector, he put in a FOIL request. Mr Curran, do you recall coming in and looking through that?

Mr. Curran: I did come in a while ago as I was trying to understand the rules and regulations with the Town. I'm not an expert in Zoning, I'm not an expert in permissible usage and I was trying to educate myself and that was also at the suggestion of Michael Levine as well that I should read up and try to get a greater understanding of this issue.

Chairman Froessel: OK, Rick I wouldn't expect to have that information, but the Town may have it and it is something we may need to look at.

Ms. Desidero: There is a file, Chairman Froessel. I'm not going to say what's in it. I'm not saying that Mr. Curran knew what he was looking for at the time, but there is a file.

Chairman Froessel: OK, it's good to know there is one. Rod, were you done?

Boardmember Cassidy: Yes, I was done. Based on that, if we're going to look at the file, obviously I don't think voting tonight would be appropriate.

Chairman Froessel: I agree. We will move to Greg, any questions or comments?

Boardmember Wunner: I would like to see this property have an opportunity to survive. I don't think it benefits anyone in the Town to have this sit empty or see it fail and go through that cycle, so tonight I probably would like to have some more information, but I would like to see this owner have an opportunity to make that business viable.

Chairman Froessel: OK, John any questions or comments for the applicant?

Boardmember McNeill: I wholeheartedly agree with Greg. This has been a service, as far as I'm concerned and I'm only here 55 years, and I know that's only been there about 20 or so. Ever since I've been here, that I can remember, they were doing those types of repairs and things like that back in the day. It's a clean shop. It's a viable business right now that's trying to make extra money and make it a viable business. Again, I reiterate what Greg said, you want another empty building up there? I mean this is something that... I've seen the inside workings of this place. It's a repair shop. Let the guy do what he wants to do there and make

his money. I mean I understand the re-zoning and all this and all that, but that all changes over time. We have to use a little bit of commonsense to help this gentleman move his business along so he can stay there and he can make it viable in the long run. I'm willing to vote tonight. I understand we're probably going to go another month, but I don't need any more time. Thank you.

Chairman Froessel: OK, thank you John. Steve, comments or questions for the applicant?

Boardmember Corozine: No questions for the applicant, Tim. My understanding, and Will I believe and I don't want to misquote you, but I believe that you said this would not be an interpretation issue, that we're really looking at strictly a land use issue? Is that correct?

Mr. Stephens: I think Steve what I said was that because it is no longer a permitted or specially permitted use in that Zone, the SR-22 Zone, they would be seeking a Use Variance as a result of the change of the Zoning to tell you the truth. I think what Rick and the applicant has been positing all along is that because they've had this repair license and as John pointed out his memory is that they've been selling tires there for years, whether that's factual or not I have no idea, but the reality is that this would be because of the Zoning structure, it would require a Use Variance to expand that use.

Boardmember Corozine: Thanks Will. Just to follow up that comment, Tim, I would be prepared to vote on a Use Variance tonight. If we did have to go the interpretation route, I think there is more research that needs to be done there.

Chairman Froessel: OK, thanks Steve. Andres, any questions or comments?

Boardmember Gil: I actually have a couple questions. My first question is, I'm currently under the executive order, is this place open to conduct oil changes as a vehicle repair shop providing essential services or are you completely shut down under the current executive order leaning more towards the carwash business.

Mr. Curran: I'll answer that. Currently only the lube and repair shop is open. We've seen a decline in traffic, I'm not going to lie. I had 15 employees prior to this, several of them have been furloughed. I'm down to really three, myself and two others. It's catastrophic. We are deemed a necessary and required business in the lube shop. We do inspections, we do minor repairs. I've been giving big discounts to the first responders. The carwash is closed, that is deemed non-essential in the State of New York so all the carwashes across the state: New York, Connecticut, and New Jersey. These are very, very tough times for any business on Route 22 that's been closed. I can't tell you how difficult it's been for me to have a business that would generate, you know, \$100,000 a month in sales and this month I have \$5,000 in sales and I have employees at home that want to work, with kids. Some of them are not technologically advanced. They can't even get into unemployment yet. It's a very, very challenging situation we're in and I'm trying to think long-term and I'm trying to think about the positives. I'm in a tough scenario right now and as is, many other small businesses up and down 22 right now. Look at ACME; ACME is 25 to 30% empty. It's a very challenging situation. It is what it is and I hope it all improves in the next 60 days. Otherwise it's going to be extremely tough to survive.

Boardmember Gil: I totally understand that from a small business perspective. I think there are a lot of other members on the Board that understand that perspective. However, I think looking at balancing both scenarios, the fact that you're operating right now and you have a source of revenue compared to looking at waiting an additional time period so we can go back and look at the prior application to see what the intent was at the time that application was submitted and approved. I'm not ready to vote this evening, but I don't want to give an indication one way or another how I would vote so thanks.

Chairman Froessel: OK, thank you Andres. Rick, I think the prudent thing to do here is to hold you over for another month. I really do appreciate it. You had a very informative presentation: a lot of facts. In fact so many I need to take some time to go over them, but we'll dig in. Victoria, I would like to see if we can get our hands on the file that you talked about, whether it's a Planning Board file or what have you on this so we can have that and have that reviewed by next month and hopefully vote on it next month.

Ms. Desidero: I can get that for you as soon as we open up again.

Chairman Froessel: OK, and Rick, I want to be clear, nobody here thinks that your client pulled a fast one or did anything wrong. No one thinks there was any skullduggery on the part of your client and I just want to be clear about that. I think your client bought what he thought he bought and then there turned out to be some issues with approvals from the past and he's the one left holding the bag having to deal with it and we understand that.

Mr. O'Rourke: Tim, I appreciate that and I think... I raised the interpretive issue because as with so many of these issues, when you have a use issue and the way it is defined quite frankly often times there's ambiguity that's there from an interpretive point of view and particularly when I went through this and saw the history of this I recognized that there were two issues here. One was the interpretive issue and of course the alternative is if you disagree with an analysis that perhaps this was within the gambit of the approval, that's fine and that's separate and distinct, but we still have our Use Variance application there and we presented and we've been transparent in terms of producing our tax records and everything. This business was hurting, is hurting, and quite frankly I think that we've met the standards necessary for a Use Variance regardless of whatever happened in the past. That's the reality of today, that's the reality of hopefully beyond this COVID-19, but it's a part of... Obviously this application was filed before that ever occurred and we think we have established the damages that in the state of this business as is prior to COVID-19 and that we've met the standards for the granting of a Use Variance. Thank you very much and thank you for listening to me. I do want to get through the FOIL because I know it was important.

Chairman Froessel: I appreciate that. OK, so we'll take it up again. You'll be first on the agenda next month and hopefully we'll be ready to vote.

Mr. O'Rourke: Thank you very much.

Chairman Froessel: You're welcome. OK, moving on to number two on the agenda: Adam and Alexis Nery.

2. Adam & Alexis Nery 24 Deans Corner Road, Tax Map ID 78.-1-105

Public Hearing to review an application for a pool that requires the following variances: 40 ft. south front yard setback where 60 ft. is proposed and 100 ft. is required; and 54 ft. west side yard setback where 46 ft. is proposed and 100 ft. is required.

Adam and Alexis Nery and Kevin Cohen were sworn in.

Mr. Cohen: Nejame & Sons Pool Company are represented as well.

Chairman Froessel: Mr. and Mrs. Nery, why don't you go ahead and explain to us what it is you are seeking to do and what it is you need a variance for.

Mrs. Nery: Hi everyone, thanks for being here and listening to us. We are proposing to put an on-ground pool in. The property we have is non-conforming and we have a 100 ft. setback, which is making improving this property a little difficult, but this is going to be our forever home and we want to raise our future kids here. We're just trying to make it everything we dreamed of. As you can see on the screen, there is the proposed pool and if you are able to see there is a big grade. Although our property is large, where our house is and where it is set on the

property it's a very small portion of what land is actually usable. That's about it and I will let Kevin take it from here, if that's OK?

Chairman Froessel: That's fine. Go ahead Mr. Cohen.

Mr. Cohen: So, basically, if you can see the numbers there, the heights and the elevations actually climb pretty high behind the pool and if you look to the right of the pool, after about maybe 20 or 30 ft. there are woods going all the way up the hill. It's all trees and anything forward to the front of the property would still require a variance because, but we'd also be closer to the septic. So, that's kind of the spot where the grade was easier to put the pool in than anywhere higher and anywhere lower because of the septic.

Chairman Froessel: It looks like the location of the septic combined with the topography and the shape of the property, pretty much leaves you with that being the only location you could put a pool.

Mr. Cohen: Yes, it is and even then, we might have to do a small retaining wall on the uphill side, but that's the only workable area really anywhere.

Chairman Froessel: Yes, Victoria sent us some photographs that accompanied the application earlier today and when I look at those, the first thought in my mind was they're going to need a retaining wall.

Mr. Cohen: Yes, it's going to be probably a 3 ft. wall behind the pool.

Chairman Froessel: Mr. and Mrs. Nery, how long have you owned the house.

Mrs. Nery: We've been here since January 2018.

Chairman Froessel: OK. I don't think I have any additional questions, but I will go around and poll the Board. Paul, any questions for the applicant?

Boardmember Vink: No.

Chairman Froessel: OK, Rod, any questions for this applicant?

Boardmember Cassidy: No.

Chairman Froessel: OK, Greg?

Boardmember Wunner: It's the only sensible place to put the pool it seems. I have no questions.

Chairman Froessel: OK, thank you. John?

Boardmember McNeill: No, I don't have any questions. I actually know the property. I've done work for the neighbors who I believe sent a letter of go ahead with it... Monty. So, no questions here.

Chairman Froessel: OK, thank you John. Steve, any questions for the applicant?

Boardmember Corozine: No questions Tim.

Chairman Froessel: OK, Andres, any questions for the applicant?

Boardmember Gil: No questions.

Chairman Froessel: I'm glad John reminded me about the neighbors because we actually, I'm mention for the record that we got a letter dated February 22, 2020 from neighbors Monty Denneau and Jean Fairwell indicating that they had no objection to the request for the variance. That letter will be in the record on this. Mr. and Mrs. Nery, are the neighbors on the survey sort of directly behind you?

Mrs. Nery: Yes, correct. We share a driveway with them. They are directly behind us. You will see their pool also on that map.

Chairman Froessel: And that's the closest residence to yours, correct?

Mr. and Mrs. Nery: Yes.

Chairman Froessel: OK, if no one has any other questions, unless any of the Board members have an objection, I think we can vote on this this evening.

Boardmember Vink: I'm ready.

Chairman Froessel: I hear no objections and I don't see anyone waving their hands or anything of that nature, so I guess we can go ahead and vote on this. Just to make it easy.

Boardmember Vink: Have the mailings been reviewed?

Ms. Desidero: Yes, the mailings are in order.

Chairman Froessel: OK, thank you.

Boardmember Vink: Is there anyone else with us today who has any questions or comments about this application?

Chairman Froessel: It doesn't appear so, thank you for picking up on that Paul. OK, I'll go ahead and make a motion to grant the applicant a variance for the installation of a swimming pool as depicted on the survey submitted to the Board encompassing a variance of 40 ft. on the south front yard and a variance of 54 ft. on the west side yard.

The motion to grant the applicant a variance of 40 ft. from the south front yard setback and a 54 ft. variance from the west side yard setback was introduced by Chairman Froessel, seconded by Boardmember Vink. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
No, I don't think it's an undesirable change. Their closest neighbor has a pool and their neighbor has submitted a letter stating that they have no objection, which is evidence that there is no change in the character of the neighborhood.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
I would say no because the survey submitted by the applicant shows that the property is unusually shaped. It has a deeply sloped topography up away from the house and also has as septic constraint so the place where they want to put the pool is pretty much the only place they can put the pool.
3. Whether the requested variance is substantial.
Arguably it is, but I think it's mitigated by the fact... by the topography and septic issues that were mentioned earlier.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
There is no evidence of that.
5. Whether or not the alleged difficulty was self-created.
Again, I don't think it was self-created. I think it's a function of the unusual shape of the property and the topography and the location of the septic.

Roll Call Vote:

G. Wunner	In Favor
J. McNeill	In Favor
P. Vink	In Favor
R. Cassidy	In Favor
S. Corozine	In Favor
A. Gil	In Favor

T. Froessel In Favor

The motion to grant the variances as stated in the motion passed by a vote of 7 to 0.

Chairman Froessel: Victoria, in terms of procedure, I think you're going to have to scan and email me the sheet. I'll sign it and scan and send back to you, and then Mr. and Mrs. Nery can get their building permit.

Ms. Desidero: OK, just so everyone is aware and this will be true of anyone that gets approved tonight, the building at 1 Main is closed until next week so I will not be able to do any scanning and there are no Building Permits being issued. Probably around the time I get back and you sign off will be around the time that anyone could ask for a permit anyway.

Chairman Froessel: That's right, I believe the building is closed until April 28, is that correct?

Ms. Desidero: That is correct.

Chairman Froessel: So, it will be some time after that folks. I'm sorry we can't get it to you sooner. I am sure you are probably eager to get going, but we're working under extenuating circumstances here.

Mr. Nery: Understandable, thank you.

Chairman Froessel: OK, we'll get it to you as soon as we can. Thanks. Have a good night.

3. NY Fuel Distributors, LLC / Shell Station 1450 Route 22, Tax Map ID 57.-1-16

Public Hearing to review an application for a freestanding sign that requires the following variances: 10 ft. for the sign height where 25 ft. is proposed and 15 ft. is permitted; 54.375 sq. ft. for the sign face area where 84.375 sq. ft. is proposed and 30 sq. ft. is permitted; and a 5 ft. front setback variance where 10 ft. is proposed and 15 ft. is required.

Chairman Froessel: Is anyone here for this application?

Ms. Desidero: I feel like it might be this person named Ed, but I can't see him.

Chairman Froessel: If there is anyone on for the application for NY Fuel Distributors could you please unmute yourself and let us know?

Boardmember Cassidy: Ed has wagged his finger so it's not him.

Chairman Froessel: OK, why don't we pass this one and move it to last and see if someone comes on. If not, then we will figure out what to do then.

4. Jessica DiMauro and Zachary Marks 17 Orchard Road, Tax Map ID 79.-1-40.-101

Public Hearing to review an application for a proposed porch addition to a single-family home that requires the following variances: 25 ft. west front yard setback where 25 ft. is proposed and 50 ft. is required; 15 ft. north side yard setback where 10 ft. is proposed and 25 ft. is required; 18 ft. south side yard setback where 7 ft. is proposed and 25 ft. is required; and a 53 ft. total side yard setback where 17 ft. is proposed and 70 ft. is required.

Richard Vail, Architect was sworn in.

Chairman Froessel: Is anyone on for this application?

Ms. Desidero: Rich Vail.

Chairman Froessel: Mr. Vail, how are you this evening?

Mr. Vail: Very well, how are you?

Chairman Froessel: Just fine.

Mr. Vail: Good evening, I'm representing Jessica DiMauro and Zachary Marks. They are the owners of the residence at 17 Orchard Road. We're proposing to add a deck off the west side of the house. On top of the deck there will be a pergola, just like an open structure that will provide some shade over the deck. We also have two stairs on the north and south sides.

Chairman Froessel: Mr. Vail, we're talking about this lot 17, is that the one?

Mr. Vail: Correct, yes.

Chairman Froessel: OK.

Mr. Vail: It's 13 ft. by 26.5 ft.

Chairman Froessel: OK. It looks like the property is between the two roads, Orchard and Terrace?

Mr. Vail: That's right, yes.

Chairman Froessel: And the proposed deck is on what would be considered the back of the house?

Mr. Vail: That's right, yes. The part that has the view of the lake; it's the lake-facing side. It's a couple roads down.

Chairman Froessel: OK.

Mr. Vail: We've been through approval from Vail's Grove Co-Op.

Chairman Froessel: OK, and just to make sure I am reading this correctly: the dimensions of the deck are 13 ft. by 26.5 ft., is that correct?

Mr. Vail: That's correct, yes.

Chairman Froessel: The only part that encroaches any further than the existing structure... there looks like there are stairs on either side of the deck?

Mr. Vail: That's right, yes, they do project out from the 26.5 ft.

Chairman Froessel: OK, am I correct that the pergola is only over a portion of the deck?

Mr. Vail: That's right, it's over the southerly half.

Chairman Froessel: OK, that's what it looks like. Just for the record, I'll note that there's a letter in the application packet from the Vail's Grove Cooperative dated September 23, 2019 stating that the Board of Directors of the Cooperative has approved the application to build the deck and the pergola. I will go through each of the Board members and see if anyone has a question or comment about this. Paul, I'll start with you: do you have any questions for the applicant's architect?

Boardmember Vink: No, this is a fairly standard Vail's Grove application. I have no questions. I understand it.

Chairman Froessel: OK, I agree with you by the way. Rod, any questions or comments for this applicant?

Boardmember Cassidy: No questions or comments. I'm good.

Chairman Froessel: OK, Greg, how about you?

Boardmember Wunner: I have nothing to add to this.

Chairman Froessel: OK, thank you Greg. John, how about you, any questions for the applicant?

Boardmember McNeill: No, it's a standard Vail's Grove application.

Chairman Froessel: Steve, any questions for the applicant on this one?

Boardmember Corozine: Yes, is this replacing an existing deck?

Mr. Vail: No, there's no existing deck right now. It's not replacing anything; it would be new.

Boardmember Corozine: No further questions, Tim.

Chairman Froessel: OK, thank you. Andres, any questions for the applicant?

Boardmember Gil: No questions.

Chairman Froessel: OK, I think this is a typical Vail's Grove application that we see pretty frequently. Unless anyone has any objection, I think we can go ahead and vote on this tonight. I see nodding heads; I don't see any objections.

Mr. Stephens: Are the mailings in order?

Ms. Desidero: Yes, the mailings are in order.

Chairman Froessel: Very good, thank you Victoria. So, hearing no objections we can go ahead and vote on this.

Boardmember Cassidy: Hey Tim, is there anyone in the audience that wants to speak?

Chairman Froessel: Fair question, Rod, I keep forgetting that one because the audience is just a series of boxes on my screen. Is there anyone that has any questions or comments who is listening in by phone or by video that has any questions about this application? By the silence, I will take it as a no. So, I will open it up: would anyone care to make a motion with respect to this application?

Boardmember Vink: I'll make a motion to grant the applicant the four requested variances.

The motion to grant the following variances: 25 ft. west front yard setback where 25 ft. is proposed and 50 ft. is required; 15 ft. north side yard setback where 10 ft. is proposed and 25 ft. is required; 18 ft. south side yard setback where 7 ft. is proposed and 25 ft. is required; and a 53 ft. total side yard setback where 17 ft. is proposed and 70 ft. is required was introduced by Boardmember Vink, seconded by Chairman Froessel. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
I believe this is perfectly in keeping with the character of the neighborhood or would not have been approved by Vail's Grove, but certainly it is in keeping with other applications that have been before us.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No, it cannot. The lots are simply too small for any expansion and if I look at... I'm pretty sure this house itself is non-conforming.
3. Whether the requested variance is substantial.
It is substantial when you look at the numbers, but it is not substantial in the scheme of Vail's Grove so I do not believe that it is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
There's no evidence of that and I don't believe it will.
5. Whether or not the alleged difficulty was self-created.
I do not believe it was self-created, it was created by the Zoning that has been imposed on the lots there.

Roll Call Vote:

G. Wunner	In Favor
J. McNeill	In Favor
P. Vink	In Favor
R. Cassidy	In Favor
S. Corozine	In Favor
A. Gil	In Favor
T. Froessel	In Favor

The motion to grant the variances as stated in the motion passed by a vote of 7 to 0.

Chairman Froessel: I think you heard the procedure: you'll be contacted when we're able to execute the variance and give you something to take to the Building Department. It's going to take at least eight or nine days.

Mr. Vail: OK, that's fine. Thanks so much for still having the meeting.

Chairman Froessel: You're welcome. Thank you very much.

5. JCE Enterprises, LLC 12 Old Route 6, Tax Map ID 55.12-1-12

Public Hearing to review an application for site plan amendment that includes proposed stairs in a front yard setback which requires a variance of 13.6 ft. where 21.4 ft. is proposed and 35 ft. is required as referred by the Planning Board.

Robert Cameron, Architect, and William Frank were sworn in.

Chairman Froessel: Victoria, mailings are in order?

Ms. Desidero: Yes, these mailings are also in order.

Chairman Froessel: OK, very good. Thank you. Gentlemen, I don't know which one of you wants to speak first but why don't you go ahead and describe for us what it is you want to do.

Mr. Cameron: I will briefly describe the property. It's an existing building located on Old Route 6. It was probably constructed in the 30s or maybe up to the 40s, early 50s; we're not really sure. The applicant, William Frank, is an engineer and he wishes to use the second floor to expand his office. Unfortunately, there is no connection between the first and second floor and we have no room on the inside as you can probably see by the floor plans, the A drawings. We cannot construct it inside. It would just take up too much space, it would be too difficult, and we would have to provide bearing walls to support the existing structure that we cut. So, as you can see on the floor plan that's being shown there, on the right side is a fireplace and there's an exit door at the fireplace location. We are proposing to build an exterior, but enclosed stair leading from that door up to the second floor and that's really our only location that we can do. We can't do it on the left side of the building because there are existing boilers and infrastructure over there and in the rear of the building there is grade; the grade is up against the building in the back. The reason that we need a variance is because almost all of the existing building is within the front yard setback, so where we're proposing the stair is not any further forward than the front of the existing building. It's located on the side, but just most of the building is in the front yard setback, anything that we do on the outside is going to require us to need a variance. We believe that is the best location for the stair and it results in a minimum impact to needing a variance and any impact to any visual infringements in the front yard, because basically it's hidden behind the existing chimney and that is why we are requesting a variance.

Chairman Froessel: Just to clarify, that first floor floorplan that we looked at, the door leading to the proposed staircase up to the second floor would be an interior door?

Mr. Cameron: It's currently an exterior door.

Chairman Froessel: But it will be an interior door that leads only to that staircase and up to the second floor, correct?

Mr. Cameron: Correct.

Chairman Froessel: And you're not planning on having any access from that staircase to the outside?

Mr. Cameron: I had not specifically thought about it, but we have access from two other doors anyways; the front door and the side door on the south side.

Chairman Froessel: OK.

Mr. Cameron: So, it is not necessary to access outside.

Chairman Froessel: OK, while I'm thinking about it, I am just going to mention for the record, we received an email today from Dean and Lisa Abatemarco 14 Old Route 6, which I will read into the record. We received it at 5:21 pm this evening. *"To Whom It May Concern, With regard to number 5 on the agenda for the Public Hearing, JCE Enterprises, LLC, we as the immediate neighbors, were informed of the variance request. This email is to state that we have been apprised by the property owner that this variance request is but one part of a larger project for which additional variances may be required. We at 14 Old Route 6 have no complaint with this part of the owner's plan for proposed stairs. We do, however, have issues with the later part of the plan to establish a parking lot in the rear of the property. It is our expectation that we will have a future opportunity to take issue with that part of said owner's proposal and variance requests. Thank you,"* Those neighbors do not have any objection to this particular variance request. I'll go through the various Board members and see if anyone has any questions about this. Paul, I'll start with you, any questions for the applicant?

Boardmember Vink: Yes, it's really based on that email and what your next step is. Are you going back to the Planning Board for more approvals and is this the only thing you're going to be in front of us for? Is there anything else that you expect to come up that's going to bring you back to us?

Mr. Cameron: No, that is the only variance that we need.

Mr. Frank: From the Zoning Board.

Mr. Cameron: I have to go back to the Planning Board for approval of the Site Plan. We needed to come to the Zoning Board first to get the variance and then we would go back to the Planning Board. The parking in the back does not need any variances.

Boardmember Vink: OK, thank you.

Chairman Froessel: I should note, this application actually was referred to us by the Planning Board. Paul, anything else?

Boardmember Vink: No, that's it.

Chairman Froessel: OK, Rod, any questions for the applicant?

Boardmember Cassidy: No questions.

Chairman Froessel: OK, Greg, do you have any questions?

Boardmember Wunner: I have no questions.

Chairman Froessel: No questions, OK, thank you. John, do you have any questions for the applicant?

Boardmember McNeill: No, no questions. I know the property well, very well and I'd love to see how he's going to put a parking lot in the back later, but staircase on that side, no problem.

Chairman Froessel: Thanks John, one thing at a time. Let's not get ahead of ourselves. Steve, any questions?

Boardmember Corozine: Yes, as I understand it you said there is a second floor. There is flooring and rooms on the second floor, but there's no way to access it, is that correct?

Mr. Cameron: Yes, it's a two-bedroom residential apartment.

Boardmember Corozine: On the second floor?

Mr. Cameron: On the second floor and they're not connected internally to each other floor-wise.

Boardmember McNeill: Access to the apartment was from the rear of the building.

Boardmember Corozine: OK, and I guess your plan is to make this an engineering office?

Mr. Frank: Downstairs we are an engineering office now and I'm looking to just use the second floor. I have no intention to rent it out.

Boardmember Corozine: OK, no further questions Tim.

Chairman Froessel: OK, thank you Steve. Andres, any questions for the applicant?

Boardmember Gil: No questions.

Chairman Froessel: OK and I think I asked the only question or two that I had. Is there any objection from anyone to voting on this tonight? I don't see any so no objection. Is there anyone else on the video conference or audio that has any questions or comments for this applicant? Does not appear that there is. OK, so hearing silence then we can go ahead. I will once again invite anyone that might want to make a motion on this application.

Boardmember Vink: I will move to grant the applicant a variance of 14 ft. for the proposed stairs in the front yard setback as depicted on the plans and referred to us from the Planning Board.

The motion to grant the applicant a 14 ft. variance from the front yard setback was introduced by Boardmember Vink, seconded by Boardmember Cassidy. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
No, I don't believe there will be any. Particularly because the staircase is enclosed.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
As has been pointed out to us, the building itself is within the setbacks so it is not possible to do that.
3. Whether the requested variance is substantial.
I do not think it is substantial given what is already existing on the property.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
There is no evidence to that and there does not appear to be any.
5. Whether or not the alleged difficulty was self-created.
No, I don't believe it is, it is really just a safety measure based on the existing conditions of the property.

Roll Call Vote:

G. Wunner	In Favor
J. McNeill	In Favor
P. Vink	In Favor
R. Cassidy	In Favor
S. Corozine	In Favor
A. Gil	In Favor
T. Froessel	In Favor

The motion to grant the variances as stated in the motion passed by a vote of 7 to 0.

Chairman Froessel: Mr. Cameron and Mr. Frank, thanks very much. As you probably heard, it's probably going to take nine or 10 days for us to get you a piece of paper that will enable you to get your building permit, but we'll get it to you as soon as we can.

Mr. Cameron: Thank you, we appreciate it. Good luck and be safe.

Mr. Frank: We're going back to the Planning Board so I will be seeing Victoria.

6. Gas Land Petroleum 3411 Danbury Road, Tax Map ID 68.-2-69

Public Hearing to review an application for site plan amendment as referred by the Planning Board that requires the following variances: 26.4 ft. in the front yard to allow 8.6 ft. setback where 35 ft. is required; 29.3 ft. in rear yard to allow a 5.7 ft. setback where 35 ft. is required; 8.68% Lot Coverage variance to allow 53.68% where a maximum of 45% is allowed; and 8.68% Open Space variance to allow 46.32% where 55% minimum is required.

Christopher LaPine was sworn in.

Chairman Froessel: I assume the mailings are in order?

Ms. Desidero: Yes, they are.

Chairman Froessel: OK, very good. Mr. LaPine, why don't you go ahead and please explain your application to us.

Mr. LaPine: Good evening Mr. Chairman and members of the Board. I first want to apologize as the applicant and owner is unable to make it this evening. He and his wife just welcomed a new girl. They just brought her home from the hospital so he was unable to attend and I think everyone can understand that.

Chairman Froessel: That's a reasonable excuse.

Mr. LaPine: Gas Land Petroleum owns and operates an approximately 0.9-acre site at the intersection of Starr Ridge Road and Danbury Road, specifically it has an address of 3411 Danbury Road. The facility contains an 1800 sq. ft. convenience store and pump islands beneath a canopy. The site has been in operation since 2003. At this point in time, Gas Land desires to improve the vehicular maneuverability between the canopy and the convenience store. Right now, it's restrained by a 13 ft. width. They'd like to improve the pedestrian safety as well. Currently the sidewalk in the front of the building including the curb is only 3 ft. wide. As part of this, they'd also like to increase the size of their building by 431 sq. ft., modernize the facility, restripe the parking lot to the east of the site, and conceal the existing refuse enclosure. Currently it's without an enclosure. They would also like to take this opportunity to add some landscaping in the front of the building and along some of the various landscaping beds on the property. The building itself will be shifted to the south on the property and they will be preserving a portion of the existing building. The intent is that portion of the existing building that they're preserving will allow the operator or owner to maintain the operations while the rear of the facility is being built. The placement of the building to the south will increase the aisle-width in the front of the store, which currently is 13 ft. and will allow it to go up to 26 ft. It will provide an opportunity for an adequate sidewalk of at least 5 ft. in width and will allow for the opportunity to do some attractive landscaping and beautify the building. The site itself was re-zoned in 2015 to the SR-6 District, it was previously the HC-1. As a result, the required minimum front and rear yard setbacks as well as minimum lot coverage and open space for the existing parcel is a pre-existing non-compliance. The proposed improvements that the applicant desires to incorporate as a result of this project will seek to further encroach upon the front and rear yards and reduce the compliance with the site coverage and minimum open space. The applicant himself is kind of at a hardship for any improvements on this property because on the eastern portion of the site it is restrained by not only the existing septic system, but also by a 50 ft. wide easement of ingress and egress to the rear property owner. We don't believe that the proposed variances being sought will adversely impact the neighboring properties. The frontage of the properties are both Starr Ridge Road and Danbury Road and the property to the rear is an undeveloped parcel where the variances are being sought for the rear yard setback. The actual building itself, if you look at the southern portion of the property, the topography in the rear of the property goes back so that similarly speaking, the screening that you see today is similar to what the screening is that will consistently be there. The rear of the property is 8 ft.

higher, at least on our property, than the finished floor and as you continue on to the neighboring property the elevation continues to ascend. So, from a visibility standpoint, it's not going to be anything substantial that's going to be impacted based on the existing contours. The intent is to build the (inaudible) to the existing slope so that we're not going to clear out all the area behind there or incorporate any retaining walls and the topography would stay as is. Our intent before you this evening is to seek variances for the front, rear, maximum lot coverage, and minimum required coverage for open space.

Chairman Froessel: OK, as a preliminary question: Victoria, I think this is something that needs to go to County Planning, isn't it?

Ms. Desidero: Yes, actually you may recall that these were from March?

Chairman Froessel: Yes.

Ms. Desidero: And they all went to County Planning and they all came back.

Chairman Froessel: OK, with no objection?

Ms. Desidero: No objections.

Chairman Froessel: OK, then we're good to vote on this then.

Ms. Desidero: Yes.

Mr. LaPine: I neglected to mention, we also appeared before the Planning Board with this proposal as well and they looked upon this as favorable because of the fact that we're going to be improving the aesthetics of the existing building and everyone was kind of in agreement that it could use a makeover at this point in time.

Chairman Froessel: Yes, this did come to us as a referral from the Planning Board. Mr. LaPine, do you know if there's going to be any change to the nature of what's going on in that building? Is it still going to be sort of a mini-mart type of facility?

Mr. LaPine: Yes, he will continue to operate it. There's a deli inside, coffee and mini mart. This will give him the opportunity to actually modernize the facility in terms of walk-in coolers that aren't currently available to this facility; they're about 10 ft. in depth. He's also going to have the opportunity to add some storage space and a small office in the back of the building as well.

Chairman Froessel: What, if anything, will be the change in the square footage of the building?

Mr. LaPine: The building will increase in size by 431 sq. ft.

Chairman Froessel: OK.

Boardmember Vink: But you're shifting it back away from the pumps where it currently exists, do I understand that correctly?

Mr. LaPine: You are correct. Right now one of the issues there is it has a narrow traffic aisle of about 13 ft.

Boardmember Vink: I am well aware of that.

Mr. LaPine: Not only are we going to increase that, but we're going to improve the sidewalk there that's 3 ft. including the curb line. Now we're going to provide a 5 ft. wide sidewalk and a landscaping bed in front of the store.

Chairman Froessel: OK, is that 5 ft. sidewalk where it says proposed pavement? Oh I see, proposed sidewalk.

Mr. LaPine: The proposed pavement will allow an aisle width of about 26 ft. in the front of the building, between that and the canopy.

Chairman Froessel: OK, is there currently a refuse enclosure on the property?

Mr. LaPine: There is, and it's to the east of the building; well, it's not a refuse enclosure, it's just a bin. There is no enclosure for it.

Chairman Froessel: OK, what's the enclosure going to consist of once it's built?

Mr. LaPine: It's going to have a masonry appearance on three sides and then it will have either a cedar gate or some sort of a Trex gate.

Chairman Froessel: Why don't I survey the Board members and see if anyone has any questions or comments on this. Paul, I'll start with you: any questions?

Boardmember Vink: No, I'm very familiar with the property.

Chairman Froessel: OK, Rod, how about you: any questions?

Boardmember Cassidy: No questions.

Chairman Froessel: Greg? Is Greg muted again?

Boardmember Wunner: Unmute, OK, I have no further questions.

Chairman Froessel: OK, thanks Greg. John, how about you, any questions for the applicant?

Boardmember McNeill: No, and I'm also familiar with the property.

Chairman Froessel: OK, Steve, any questions?

Boardmember Corozine: Yes, just one. I know that you had mentioned that there's an easement on the property, could you point out where that is?

Chairman Froessel: I think it's on the drawing that Ashley had up. Move it to the left a little bit, it's on the right. There it is. It's between those dotted lines Steve.

Boardmember Corozine: OK, thank you.

Chairman Froessel: Any other questions Steve?

Boardmember Corozine: No, I'm fine. Thanks Tim.

Chairman Froessel: Andres, do you have any questions?

Boardmember Gil: I have no questions.

Chairman Froessel: OK, thank you. Is there anyone else on the video conference or on by telephone who has any questions or comments about this application? Hearing no one I will assume that there is no one with any questions or comments among the public. Among the Board members, how do we feel about voting on this? Anyone have any objection to voting on this this evening? I see no objection, a bunch of Board members shaking their heads no. It looks like we're good to go and vote on this. Mr. LaPine, do you any final questions or comments you'd like to make in support of your application before we close the Public Hearing and vote on it?

Mr. LaPine: Just to reiterate I think these improvements, as I said, will certainly improve the maneuverability for the vehicles onsite and the safety of the pedestrians. I think the rear and front yard setbacks will be concealed by the existing topography, and I think the modernization of this building will certainly warrant the open space and maximum lot coverage that are being sought. I don't think they're going to be impactful either because, as I said, both sections are adjoining pretty heavily traveled roads.

Chairman Froessel: OK, thank you. So, with that I will go ahead and make a motion to grant the applicant's variances.

Boardmember Vink: We're closing the Public Hearing?

Chairman Froessel: Yes, we are closing the Public Hearing.

The motion to grant the applicant four variances: a 26.4 ft. in the front yard to allow 8 ft. setback where 35 ft. is required; in the rear yard allowing a 5 ft. setback where 35 ft. is required; a Lot Coverage variance to allow 54% where a maximum of 45% is allowed; and an Open Space variance to allow 47% where 55% minimum is required. was introduced by Chairman Froessel, seconded by Boardmember Cassidy. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.

No, I don't think it will be an undesirable change. It's effectively going to be the same business in a very similar sized building, just re-oriented on the property to allow for some greater safety of people passing around the building and to allow the applicant to expand his business slightly.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

It really can't due to the shape of the property. The building is wedged in there right up against Starr Ridge Road as it is and there's pretty much nothing that he can do. He couldn't go in the other direction because he'd be encroaching on the pumps that are there, so the only direction he can go in is the one he is going in so I don't think there is any other feasible method other than a variance.

3. Whether the requested variance is substantial.

Arguably you could say that it is but in relation to where the building is currently located, the actual increase in the non-conformity is slight.

4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.

There is no evidence of that.

5. Whether or not the alleged difficulty was self-created.

I don't think it is self-created. Again, because of the way the property is laid out and the shape of the property I don't think that you can say that this is a self-created hardship.

Roll Call Vote:

G. Wunner	In Favor
J. McNeill	In Favor
P. Vink	In Favor
R. Cassidy	In Favor
S. Corozine	In Favor
A. Gil	In Favor
T. Froessel	In Favor

Mr. LaPine: Thank you very much. Can I ask for one clarification? I lost sound at one point. I heard lot coverage of 54% but then I thought I heard open space of 47 or was that supposed to be 46%?

Chairman Froessel: Open space: you needed 46.32% so we just rounded it up to 47.

Mr. LaPine: OK, because that comes up to 101% when you look at the lot coverage.

Ms. Ley: For open space you need to round down because it's a minimum requirement.

Chairman Froessel: Oh, I'm sorry, then should I have rounded to 46%?

Ms. Ley: Yes.

Chairman Froessel: OK, then I am amending my motion to 46%.

Ms. Desidero: I got it.

Chairman Froessel: So, with that your variances are granted and again, we will get that paperwork to you as soon as we can. You can probably go back to the Planning Board as well. We will have it to you as soon as we can.

Mr. LaPine: Thank you very much and I appreciate everyone's time this evening and stay safe and healthy.

Chairman Froessel: Circling back to New York Fuel Distributors: is anyone here for that application?

Ms. Desidero: I can see now that there is no one left except Board members and John Lord.

Chairman Froessel: Then I certainly don't want to penalize... this is our first meeting by this unusual method and I don't want to penalize anyone so unless anyone has any strenuous objection, I would say we just put them over to next month.

Ms. Desidero: I think actually, Mr. Chairman, we would have to do that because they did not get back to me with their mailings today.

Chairman Froessel: OK, then we couldn't vote on it anyway. Number 3: New York Fuel Distributors, the Shell Station will be put over to next month.

Ms. Desidero: There is a question from John Lord about someone being sworn in. I'm not sure who he is asking about but John, you are unmuted if you want to speak.

Mr. Lord: I just don't recall swearing in the last representative for that last application.

Boardmember Vink: I did.

Mr. Lord: You did? Cool. Sorry. Thanks a lot guys.

Chairman Froessel: Thank you. This was certainly an interesting meeting, a little bit different for all of us and I apologize if I missed some of the usual procedures. It's different for all of us, I think.

Boardmember McNeill: You did a great job.

Chairman Froessel: Thank you John. I appreciate that.

The motion to approve the Meeting Minutes of February 19, 2020 meeting was introduced by Boardmember Vink, seconded by Chairman Froessel and passed all in favor.

The motion to adjourn the meeting was introduced by Chairman Froessel, seconded by Boardmember Vink and passed all in favor.

Respectfully submitted,
Cathy Chiudina
Victoria Desidero

FULL AUDIO RECORDING OF THIS MEETING AVAILABLE AT: <https://www.southeast-nj.gov/335/Zoning-Board-of-Appeals-Audio-Files>